IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 20045 of 2004**

Between:

Major M.J.Naidu, S/o Late M.B.Naidu,
Occ: AMC Officer, aged 55 years,

R/o Sainikpuri, Secunderabad.

**..... PETITIONER**

AND

1 Union of India, Ministry of Defence,
rep. by its Secretary at New Delhi.
2 The Director General, Medical Services ( Army),

Adjutant General's Branch, Army Headquarters,
L Block, New Delhi.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ in the nature of Writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring the proceedings dt. 5-7-2004 in No. B/12043/AMC (NT)/DGMS-1(b) and the telegraphic order dt. 27-10-2004 on the file of the 2nd Respondent as illegal, arbitrary and unconstitutional.

**Counsel for the Petitioner: MR.N.SRIDHAR REDDY**

**Counsel for the Respondent Nos: MR.ARAJASHEKAR REDDY (SC FOR CG)**

**The Court at the stage of admission made the following:**

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**ORDER:**

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The writ petition is filed for issue of Mandamus to declare the proceedings dated 05.07.2004 in No.B/12043/AMC(NT)/DGMS-1 (b) and the telegraphic order dated 27.10.2004 issued by the 2nd respondent as illegal, arbitrary and unconstitutional.

The brief facts that are required for the purpose of disposal of the present writ petition may be delineated as follows:

The writ petitioner was commissioned as Officer in the Army Medical Corps on 05.07.1985 and during his 35 years of service, he never asked for any compassionate posting except the one on 08.12.2002, on which date he made an application seeking compassionate posting to Military Hospital, Secunderabad on the grounds of medical and children education. On 31.03.2003 his request was considered and orders were issued posting him to Military Hospital, Trimulgherry (Secunderabad) for a period of two years. Accordingly, he joined in the Medical Hospital in pursuance of the transfer orders. On

05.07.2004 orders have been issued transferring him again from Military Hospital, Secunderabad to 454 FD AMB (Field Ambulance). On coming to know about the same, he made an application on 16.07.2004 through proper channel to the Head quarters for cancellation of his transfer. Thereafter the headquarters kept the said transfer order pending. He also sought for personal interview with the competent authority. The competent authority assured him to consider his case sympathetically. There upon nothing was happened. On 29.10.2004 orders have been issued to implement the orders dated 05.07.2004 with regard to his transfer.

According to the petitioner, he is now last lap of his service and he is going to retire within one year eight months. He is deprived of compassionate posting. The impugned order has been issued without looking into the transfer policy and his compassionate posting orders. Hence, the present writ petition.

The respondents filed counter admitting about the transfer of the petitioner on compassionate grounds. It is stated that the application of the petitioner for cancellation of transfer orders dated 05.07.2004 was returned by the Headquarters, Southern Command, Pune, unsanctioned, as the reasons for cancellation of transfer orders are not inconformity with the existing policy. The petitioner was granted interview on 27.09.2004 by the Deputy Director of Medical Services as per his request, and he was advised to process his application for cancellation of posting afresh. But the same was not accepted. Therefore, the proceedings dated 27.10.2004 were issued to implement the transfer posting of the petitioner to 454 Field Ambulance as stipulated period as per Army Order 568/67 as amended vide Army Order 407/72 is already over. According to the respondents, the petitioner was posted to 454 Field Ambulance as a Quarter Master; it is co-located at Secunderabad, which is the permanent location of the unit. The offer is only being sidestepped to assist the med est where there is a need. Though 454 Field Ambulance is a mobile medical unit, the Field Ambulance moves on a quarterly mob practice for a short duration, generally minimum of

three days to outskirts of Secunderabad and Hyderabad. During this move, the entire unit including the quartermaster shall also move. During the past five years the Field Ambulance had moved for longer duration only on two occasions i.e., (a) 5th July to 4th November,1999 – Post Operation VIJAY – RAJASTHAN, and (b) 20th December 2001 to 19th November, 2002 – Operation PRAKARAM. According to the respondents, the transfer of the petitioner is incident of service and there is no change in place, but only being shifted to different establishment. There is no vested right for his continuance where he is being sidestepped to a sister medical establishment where there is need. Hence, the respondents pray to dismiss the writ petition.

The petitioner filed an additional affidavit stating that 454 Field Ambulance is a mobile unit, which goes from Kanyakumari to Kashmir at the discretion of the Headquarters, Southern Command. As and when there is necessity for movement, the Southern Command will order for movement of the said unit and the unit has to move, and this exercise takes place very frequently. Whenever there is any eventuality in the counter viz., floods, drought, riots etc., the unit has to move for providing medical assistance.

The learned counsel for the petitioner vehemently contended that the petitioner exercised option only one time through out his career for compassionate posting, and accepting the same, he was posted to Military Hospital, Secunderabad. The posting is given for a period of two years. Within one year, again he was shifted. Though the Headquarters of 454 FD AMB (Field Ambulance) is located at Secunderabad, but in the case of emergency, he has to move from Kanyakumari to Kashmir, and therefore, the transfer is contrary to the policy framed by the respondents, and therefore, he prays to set aside the same.

On the other hand, the learned standing counsel appearing for the respondents contended that the transfer of the petitioner is not only incident of service, but also one of the service conditions, therefore, the petitioner cannot have any right to remain at a particular place.

Further he contended that the petitioner was disturbed from the present place of charge only to require his services in the mobile unit and he prays to dismiss the writ petition.

There cannot be any dispute that the transfer is not only incident of service, but also one of the service conditions. The petitioner served nearly about 35 years in the Indian Army as an Officer in the Medical Corps. It is not in dispute that he never asked for any compassionate posting. As per the Appendix 'B' to MS Br Policy Letter No.04520/MS; Policy Dated 24.12.1990, all compassionate postings including Army Headquarters and other spots in Delhi is two years. By proceedings dated 31.03.2003 the competent authority approved the postings of certain Majors including the present petition, posting him to Military Hospital, Secunderabad, QM for two years only. The policy as framed by the respondents is not mere administrative instructions or orders, but a policy decision to be applied uniformly to all officers serving in the Army. Though it is stated in the counter that the stipulated period as per Army Order 568/67 as amended vide Army Order 407/72 is already over, but copies of those orders have not been placed for perusal of this Court. One fact, which is not denied by the respondents, is that as per one of the terms of the Policy with regard to transfers is that an Officer is entitled for compassionate posting for a period of two years at a particular place. It is also not in dispute that the posting of the petitioner to the Military Hospital, Trimulgherry (Secunderabad) is for a period of two years. Therefore, the competent authority has to follow the policy dated 19.05.1990. However, the tenure as pointed out may be extended or curtailed in service interest where necessity arises. The impugned proceedings dated 05.07.2004 does not indicate the reasons, which prompted the competent authority in effecting the transfer of the petitioner from QM, Secunderabad to 454 FD AMB (Field Ambulance). If there were a policy of shifting to one place to another place in the same area, this Court would not have interfered with the transfer order. But it is a case having accepted the request of the petitioner under compassionate postings and posted him so as to complete two years period at QM,

Secunderabad. Now the present proceedings have been issued to post him to 454 FD AMB (Field Ambulance), which is a mobile unit, goes from Kanyakumari to Kashmir. Obviously there is posting policy that all compassionate postings including Army Headquarters and other spots in Delhi shall remain two years at the place of choice. Posting of an Army personnel is made at request to a particular place, he has to serve the Army for at least two years period at the place of his choice. If there were no such policy, then this Court would not have interfered with the transfer order. The object and purpose for which the choice of posting to a place under compassionate request of an individual would certainly be defeated because of the present impugned proceedings. The petitioner did not made any request to the respondents at any point of time through out his career to post him to a place on compassionate posting. For the first time when the petitioner made a request of compassionate posting, that was accepted and the period is also prescribed, so that he would complete two years of service at QM, MH, Secunderabad.

Therefore, for the aforesaid reasons, the impugned proceedings have to be set aside in view of the fact that the impugned proceedings are contrary to the policy framed by the respondents. Having opted for a particular place, now the petitioner cannot be posted to a mobile unit where he has to move not only in the twin cities in the mobile units, but also in the circumstances so warrant, he has to move to any place from Kanyakumar to Kashmit. Hence, the impugned proceedings are set aside.

The Writ Petition is, accordingly, allowed. No order as to costs.

Dated: 10-12-2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Secretary,

Union of India, Ministry of Defence,

New Delhi

2. The Director General,

Medical Services (Army)

Adjutant General’s Branch,

Army Headquarters,

L Block, New Delhi

3. Two CD copies.